THE LIONHEART GROUP, INC. v. SY KATZ PRODUCE, INC.
PACA Docket No. R-99-0153.
Decision and Order filed April 17, 2000.

Jurisdiction - Contemplation interstate commerce.

Where a load of cucumbers was sold by a Florida Complainant to a Florida Respondent, and shipped to a customer of Respondent in Florida with the contemplation that the cucumbers would be distributed to firms outside the state, and over two-thirds of the cucumbers were shown to have in fact been shipped out of the state of Florida, but less that one-third were shipped to other Florida firms, it was found that the load was sold in contemplation of interstate commerce, and that the Secretary had jurisdiction.

Acceptance - Unloading of product.

Where Respondent gave notice of rejection following the unloading of produce the rejection was ineffective, and the load was deemed to have been accepted.

Consignment - Terminology inadequate to show.

The phrase "Customer will keep + Work Out" did not signify an agreement that the load could be handled on a consignment basis.

Attorney Fees - Contractual liability for.

Where Complainant placed words in its memorandum of sale requiring payment of attorney fees in connection with collection costs it held that the words used did not contemplate the payment of attorney fees in connection with the litigation of a good faith dispute.

George S. Whitten, Presiding Officer.
Thomas B. Bacon, Hollywood, FL, for Complainant.
Thomas W. Johnston, Pompano Beach, FL, for Respondent.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of $13,127.04 in connection with a transaction in interstate commerce involving cucumbers.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which filed an answer thereto denying liability to Complainant.

The amount claimed in the formal complaint does not exceed $30,000.00, and therefore the documentary of procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements. Complainant filed an opening statement,

Respondent filed an answering statement, and Complainant filed a statement in reply. Complainant also tendered an amended complaint with its statement in reply, which seeks attorney fees incurred in connection with the proceeding. Both parties filed briefs. Complainant filed a supplemental brief dealing with the request for attorney fees, and Respondent filed a motion to dismiss the amended complaint.

Findings of Fact

1. Complainant, The Lionheart Group, Inc., is a corporation whose address is P.O. Box 639, Pompano Beach, Florida.

2. Respondent, Sy Katz Produce, Inc., is a corporation whose address is P. O. Box 6216, Pompano Beach, Florida. At the time of the transaction involved herein Respondent was licensed under the Act.

3. On or about April 13, 1998, in contemplation that the product would move in interstate commerce, Complainant sold to Respondent, and shipped from Pompano Beach, Florida to Respondent's customer, Dixie Growers, in Plant City, Florida, one truckload consisting of 1,008 cartons of super select cucumbers, at $14.00 per carton, plus $144.00 for pallets, or $14,256.00, f.o.b.

4. The cucumbers arrived at the place of business of Dixie Growers in Plant City, Florida on April 14, 1998. The receiver noted problems with the product, notified Respondent that there were problems, and called for a federal inspection. After unloading, an inspection was made of the cucumbers on April 14, 1998, at 11:50 a.m.[1], at the place of business of Dixie Growers in Plant City, Florida, with the following results in relevant part:

LOT: A
TEMPERATURES: 50 to 52° F
PRODUCT: Cucumbers
BRAND/MARKINGS: "No Brands" Fresh Vegetables, Super Select, 1 1/9 Bu.
ORIGINS: FL
LOT ID.:
NUMBER OF CONTAINERS: 1088
INSP. COUNT: N

LOT	AVERAGE DEFECTS	including SER. DAM.	Including V. S. DAM.	OFFSIZE/DEFECT	OTHER
A	03 %	00 %	00 %	Over 2⅝ inch diameter	Decay early stages

[1]The inspection certificate states "11:50 p.m." However, the inspectors's notes (which were not a part of the record, but of which we take official notice) state that the inspection was commenced at 11:50 a.m., and completed at 12:55 p.m.

09 %	00 %	00 %	Quality (1 to 14% Scars Misshapen Cuts	Size: 6 to 9½ mostly 7 to 8½ inches in length. Generally 1¾ to 2⅜ inches in diameter
09 %	02 %	00 %	Soft and Shriveled Ends (0 to 22%)	
02 %	02 %	00 %	yellowing	
01 %	00 %	00 %	Sunken areas	
01 %	00 %	00 %	Bruising	
02 %	02 %	00 %	Decay (0 to 4%)	
27 %	06 %	00 %	Checksum	

GRADE: Fails to grade U.S. No. 1 only account condition

5. Promptly following the federal inspection Respondent was notified of the results of the inspection by its customer. Respondent then promptly sent Complainant a copy of the inspection, a copy of Complainant's manifest with "Rejected" handwritten at the bottom, and a confirmation form under its letterhead which contained the statement: THIS CONFIRMS OUR TELEPHONE CONVERSATION 4,14,98 CONSTITUTING NOTICE REGARDING: "1008 - Super Select Cuxs - Rejected - See Inspection. . . . REJECTED AT: Plant City, Fla. . . . DISPOSITION: Customer Will Keep + Work Out."

6. Dixie Growers, Inc., rendered an accounting to Respondent on September 16, 1998. The accounting was handwritten and stated as follows:

Attn: Jim Sutton

9/16/98
Account of Sale on Sy Katz PO# 32642
Shipped 4/13/98
1008 S/S Cucumbers

Inspection Cost ($121.20)
Freight from Sy Katz to Dx Grs. (500.00)
Regraded 1008 x $1.25 = (1260.00)
lost 169 in Regrade
Shipped 339 @ 12.85 = 4356.15
Shipped 277 that were rejected/return $1.02 = 282.54
Shipped 49 that were rejected/return $2.10 = $102.90
Shipped 100 @ 5.00 = $500.00
Shipped 74 @ 3.00 = $222.00

Net: 3.55
less Hdl. Chg. and commission

Paid $3.00

7. On January 6, 1999, Dixie Growers, Inc., supplied this Department with the following accounting, in the form of a computer printout, on the same load of cucumbers. The portions in brackets [ ], were handwritten:

LOT SALES LISTING
Today's Date 01/06/99
From-04/14/98 To-04/14/98

Ticket #	Date	Lot#	Grower	Desc	Qty/Rcvd	Qty/Sold	Est/Pr	Act/Pr	Sales Ext
1224	04/14/98	1224-17-6	SY KATZ	CUCUMBERS SUPER SELECT	1008				
20506	A&P EDISON		0	04/14/98		144	0.00	16.85	2426.40
20503	A&P NEW ORLEANS		0	04/14/98		48	0.00	16.85	808.80
20503	A&P NEW ORLEANS		0	04/14/98		102	0.00	16.85	1718.70
20534	BURGIN			04/14/98		45	0.00	16.00	720.00
20536	L & M COMPANIES, INC			04/14/98		32	0.00	10.00	320.00
20536	L & M COMPANIES, INC			04/14/98		56	0.00	6.00	336.00
20513	WAL-MART STORES, INC REJ RETDX FRT			04/14/98 [188 shipped Rejected Afterward to Dixie]		*1*	0.00	-282.00	-282.00
20581	BURGIN			04/16/98		100	0.00	8.00	800.00
20578	COMMERCIAL GROWERS			04/17/98		23	0.00	15.00	345.00
20593	CAROLINA BROKERAGE REJ WICK20711			04/17/98		0	0.00	0.00	0.00
20612	ALL AMERICAN			04/17/98		49	0.00	6.34	310.65
20629	START FRESH			04/17/98		30	0.00	6.00	100.00
20605	HORIZON PRODUCE REJ LAN20673			04/17/98		0	0.00	0.00	0.00
20606	STANDARD FRUIT & VEG 0			04/18/98		58	0.00	8.00	464.00
20644	COMMERCIAL GROWERS			04/18/98		52	0.00	7.00	364.00
20673	LANCASTER FOODS INC			04/20/98		24	0.00	0.00	0.00
20711	WICK & BROTHERS INC.			04/21/98		157	0.00	1.02	160.14
0	0		79 LIR 4-14	12/31/99		79	0.00	0.00	0.00
0	0		17 LIR 4-17	12/31/99		17	0.00	0.00	0.00
0	0		60 LIR 4-18	12/31/99		60	0.00	0.00	0.00
0	0		13 LIR 4-18	12/31/99		13	0.00	0.00	0.00
						[1089]			
PRODUCT TOTALS					1008	~~1090~~			8671.70
						[1089]			

LISTING TOTALS

		1008	~~1090~~ 8671.70
			[(81) Overshipped @ 9.98 avg (809.19)]
			[1008]
			7862.51

	[Gross:	7862.51	
.85 Handling Chg		(856.80)	
Frt to Dixie		(500.00)	
Inspection		(121.20)	
Regrade		(1540 -)	1232 Regraded @ 1.25
		(399.50)	470 New {illegible} (1 1/9) Boxes @ .85
		(462.40)	544 New {illegible} (1 1/9) Boxes @ .85
		(103.60)	148 New Carton {illegible} Boxes @ .70
		3879.01 ÷ 1008 = 3.85]	

8. An informal complaint was filed on November 5, 1998, which was within nine months after the cause of action herein accrued.

Conclusions

The initial defense raised by Respondent in its formal answer, and during the informal stages of this proceeding, was that the Secretary lacked jurisdiction over the transaction alleged by Complainant because it was not in interstate commerce. This defense was dropped in Respondent's brief. During the informal stages of this proceeding invoices were submitted by Respondent's customer, to whom the cucumbers were delivered by Respondent for sale, showing that over two-thirds of the product was sold by Respondent's customer to firms outside the state of Florida. Complainant alleged that it contemplated, at time of shipment, that the cucumbers would be sold to out of state firms. Also, it is entirely possible that the Florida firms that received less than one-third of the product ultimately shipped the product out of state. We conclude that the sale of the cucumbers from Complainant to Respondent was in contemplation of interstate commerce.[2]

Complainant filed a statement in reply, a brief, and an amended complaint on the same date, June 21, 1999. Complainant later asserted that the essential difference between the initial complaint and the amended complaint is that the latter specifically requests attorney fees. Section 47.6(d) of the Rules of Practice (7 C.F.R. § 47.6(d)) treats the subject of amendments to the formal complaint. The initial, somewhat lenient, provisions of the paragraph clearly deal with the oral hearing procedure during which evidence addressing matters raised in an amendment to the complaint may more easily be introduced. Complainant's amendment was offered at the close of the receipt of evidence under the documentary procedure, and, if allowed, would necessitate allowing a new round of submissions of evidence under that procedure. Under these circumstances an amendment should be allowed only for compelling reasons. We do not find that any such reasons are present here. Complainant could easily have included the explicit claim for attorney fees in its complaint, but failed to do so. Leave to amend the complaint is refused.

Respondent asserts that the cucumbers were rejected and that timely notice of the rejection was given. The evidence shows that notice of the rejection was given on the documents that were faxed to Complainant along with the copy of the

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[2] *Cf. Troyer v. Blue Star Potato*, 27 Agric. Dec. 301 (1968).

inspection certificate.[3] However, the inspection certificate clearly shows that the cucumbers had been unloaded at the time of inspection. We have held many times that the unloading of product constitutes an acceptance thereof.[4] An acceptance precludes any subsequent rejection.[5]

Respondent has alleged that the cucumbers were sold as U.S. No. 1. Complainant asserts that they were only described as "super select." The contract documents all show "super select," and do not make any reference to U.S. grade. "Super select" is descriptive terminology commonly used in the trade, but has no certain meaning. Some may take it to be equivalent to U.S. No. 1, and it certainly denotes cucumber that is relatively good compared to others available at the time. However, we do not equate it with any particular U.S. grade, in the absence of a showing that the parties so intended. There has been no such showing here. We conclude that the cucumbers were sold without reference as to grade.

The cucumbers were sold on an f.o.b. basis. The Regulations,[6] in relevant part, define f.o.b. as meaning "that the produce quoted or sold is to be placed free on board the boat, car, or other agency of the through land transportation at shipping point, in suitable shipping condition . . ., and that the buyer assumes all risk of damage and delay in transit not caused by the seller irrespective of how the shipment is billed." Suitable shipping condition is defined,[7] in relevant part, as meaning, "that the commodity, at time of billing, is in a condition which, if the shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the contract destination agreed upon between the parties."[8]

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[3]Respondent's Jim Sutton asserted that notice of breach was given verbally prior to the inspection, but did not assert that the cucumbers were rejected at such time.

[4]*Harvest Fresh Produce, Inc. v. Clark-Ehre Produce Co.*, 39 Agric. Dec. 703 (1980); *Crown Orchard Co. v. Mid - Valley Prod. Corp.*, 34 Agric. Dec. 1381 at 1385 (1975); *Conn & Scalise Co., Inc. v. Frank J. Crivella & Co., Inc.*, 20 Agric. Dec. 415 (1961).

[5]*Phoenix Vegetable Distributors v. Randy Wilson, Co.*, 55 Agric. Dec. 1345 (1996).

[6]7 C.F.R. § 46.43(i).

[7]7 C.F.R. § 46.43(j).

[8]The suitable shipping condition provisions of the Regulations (7 C.F.R. § 46.43(j)) which require delivery to contract destination "without *abnormal* deterioration," or what is elsewhere called "good delivery" (7 C.F.R. § 46.44), are based upon case law predating the adoption of the Regulations. See Williston, *Sales* § 245 (rev. ed. 1948). Under the rule it is not enough that a commodity sold f.o.b., U.S. No. 1, actually be U.S. No. 1 at time of shipment. It must also be in such a condition at the time of

We come now to the issue of whether there was a breach of contract by Complainant. We note that Complainant's attorney has made the assertion that in a "no-grade contract" the purchaser is liable for the full purchase price despite allegations of excessive defects, and cites *Santa Clara Produce v. Morrissey, Stringer & Patlan, Inc.*, 40 Agric. Dec. 430 (1981). Complainant also attacks a subsequent case (which it denominates "Plantation Produce,"[9]) as contrary to Santa Clara Produce, and states that it "makes no sense and is inconsistent with precedent." Complainant has misconstrued both cases. Complainant's error seems to stem from a failure to distinguish between grade (or quality) defects, and condition defects. Grade or quality defects are those that do not tend to change over time, whereas condition defects tend to be of a progressive nature.[10] Produce sold without reference as to a U.S. grade can have any amount of quality defects, so long as such defects do not cause the product to be unmerchantable. But the amount of condition defects allowed for product sold as U.S. No. 1, and product sold without reference as to grade, is the same when determining whether there is a breach of the suitable shipping condition warranty. The lack of knowledge as to this distinction led Complainant's attorney into much further misunderstanding of the two cases cited above. But, it is not necessary that we enter any further into that thicket. If

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shipment that it will make good delivery at contract destination. It is , of course, possible for a commodity that grades U.S. No. 1 at time of shipment, and is shipped under normal transportation service and conditions, to fail to make good delivery at destination due to age or other inherent defects which were not present, or were not present in sufficient degree to be cognizable by the federal inspector, at shipping point. Conversely, since the inherently perishable nature of commodities subject to the Act dictates that a commodity cannot remain forever in the same condition, the application of the good delivery concept requires that we allow for a "normal" amount of deterioration. This means that it is entirely possible for a commodity sold f.o.b. under a U.S. grade description to fail, at destination, to meet the published tolerances of that grade, and thus fail to grade at destination, and nevertheless make good delivery. This is true because under the f.o.b. terms the grade description applies only at shipping point and the applicable warranty is only that the commodity thus sold will reach contract destination without abnormal deterioration, not that it will meet the grade description at destination. If the latter result is desired then the parties should effect a delivered sale rather than an f.o.b. sale. See *Pinnacle Produce, Ltd. v. Produce Products, Inc.*, 46 Agric. Dec. 1155 (1987); *G & S Produce v. Morris Produce*, 31 Agric. Dec. 1167 (1972); *Lake Fruit Co. v. Jackson*, 18 Agric. Dec. 140 (1959); and *Haines Assn. v. Robinson & Gentile*, 10 Agric. Dec. 968 (1951). For all commodities other than lettuce (for which specific good delivery standards have been promulgated) what is "normal" or abnormal deterioration is judicially determined. See *Harvest Fresh Produce Inc. v. Clark-Ehre Produce Co.*, 39 Agric. Dec. 703 (1980).

[9] *Sharyland LP d/b/a Plantation Produce v. Caribe Food Corp.*, 56 Agric. Dec. 1011 (1997).

[10] See General Market Inspection Instructions for Use of Fresh Fruit and Vegetable Inspectors, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, p. 138, para. 404-404a (April, 1988).

the distinctions just mentioned are kept in mind, a reading of the two cases in conjunction with the explanations given in *Harvest Fresh Produce Inc. v. Clark-Ehre Produce Co.*, 39 Agric. Dec. 703 (1980) should dispel Complainant's perplexity.

Even if we totally discount the descriptive terminology "super select," it is clear from the results of the prompt federal inspection that the cucumbers were in breach of the warranty of suitable shipping condition. The federal inspection showed average condition defects totaling 15 percent, and temperatures were well within the normal range. The United States Standards for Cucumbers allow a tolerance of 10 percent for cucumbers in any lot which fail to meet the requirements of the grade, including therein not more than 1 percent for decay.[11] Since this was a no-grade contract the tolerance would be allocatable to condition defects only. On a coast to coast shipment we might allow an expansion of these tolerances, in certain circumstances, of up to 15 percent total condition defects, including 3 percent decay. However, this was not a coast to coast shipment, and the most that could be allowed would be a total of 11 percent condition defects, including 1 percent decay.

Respondent claims that an agreement was reached following arrival that allowed the cucumbers to be handled on a consignment basis. In support of this contention Respondent points to the language on its "confirmation" form stating: "Customer Will Keep + Work Out." However, we have held many times that such language falls short of indicating permission to handle on consignment.[12] Moreover, Respondent's Jim Sutton stated in the Answering Statement that the specific words used by Complainant's Ed Kodish were "keep the product and work them out on an open basis." While Ed Kodish specifically denied using these words, if they had

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[11]The United States Standards for Grades of Cucumbers, §51.2220, published by the United States Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, Fresh Products Branch, and available in printed form from that source, or on the Internet at http://www.ams.usda.gov/standards/vegfm.htm.

[12]See for example *Ronnie Carmack v. Delbert E. Selvidge*, 51 Agric. Dec. 892 (1992) ("handle" or "open"); *Chiquita Brands, Inc. v. Joseph Williams, Jr. Co. Inc.*, 45 Agric. Dec. 375 (1986) (respondent "should keep the shipment, [and] do with it what respondent could . . ."); *Relan Produce Farms v. Rushton & Co.*, 38 Agric. Dec. 1636 (1979) ("do the best you can"); *B&L Produce of Arizona v. Mim's Produce*, 37 Agric. Dec. 201 (1978) ("work out the load"); *Barkley Company of Arizona v. Ifsco, Inc.*, 31 Agric. Dec. 279 (1972) ("Do the best you can"); *Frank Gaglione & Sons v. Theron Hooker Co.*, 30 Agric. Dec. 528 (1971) ("the buyer should work it out"), Ralph Samsel v. L. Gillarde Sons Co., 19 Agric. Dec. 374 (1960) ("handle best possible" or "handle to best advantage").

been used they would exclude a consignment of the cucumbers.[13] We find that upon notice of the breach Complainant told Respondent to keep the cucumbers and work them out. This simply stated Respondent's obligation and right in the absence of an effective rejection.

Respondent accepted the cucumbers and is therefore liable to Complainant for their purchase price less damages flowing from Complainant's breach of the contract. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.[14] The best method of ascertaining the value the cucumbers would have had if they had been as warranted is to use the average price as shown by applicable market reports.[15] Market News Service reports for April 14, 1998, in Miami, Florida, show that 1 1/9 bushel cartons of medium size cucumbers were selling at $16.00 to $18.00 per carton. We conclude that the value of the subject cucumbers if they had been as warranted was $17.00 per carton, or $17,136.00, plus $144.00 for pallets, or $17,280.00.

The value of the produce accepted is best shown by the results of a prompt and proper resale. Such results are shown by the submission into evidence of a proper accounting. The record contains two accountings from Respondent's customer Dixie Growers, Inc. These accountings are in fundamental disagreement. Apart from the discrepancies in the accountings suggestive of actual fraud (which we do not attribute to Respondent), the fact that the cucumbers sold at such a wide range of prices after reworking is enough for us to refuse to use either of the accountings in our assessment of damages. Absent an accounting, the value of the goods accepted may be shown by use of the percentage of condition defects disclosed by a prompt inspection.[16] The federal inspection disclosed a total of 15 percent

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[13] A sale on an open basis is a sale, while a consignment is not a sale at all. See *Bonanza Farms, Inc v. Tom Lange Company, Inc., and/or Wm. Rosenstien & Sons Co.*, 51 Agric. Dec. 839 (1992) and *Cal/Mex Distributors, Inc. v. Tom Lange Company, Inc.*, 46 Agric. Dec. 1113 (1987). Respondent should be thankful that it has not succeed in proving a consignment, for given its failure to account (as will appear later), and the elevated market prices, its liability under a consignment would have been substantially higher.

[14] UCC § 2-714(2).

[15] *Pandol Bros., Inc. v. Prevor Marketing International, Inc.*, 49 Agric. Dec. 1193 (1990).

[16] See *South Florida Growers Association, Inc. v. Country Fresh Growers And Distributors, Inc.*, PACA Docket No. R-92-83, decided January 21, 1993, 52 Agric. Dec. 684 (1993); *V. Barry Mathes, d/b/a Barry Mathes Farms v. Kenneth Rose Co., Inc.*, 46 Agric. Dec. 1562 (1987); *Arkansas Tomato Co. v. M-K & Sons Produce Co.*, 40 Agric. Dec. 1773 (1981); and *Ellgren & Sons v. Wood Co.*, 11

condition defects. Accordingly we conclude that Respondent's basic damages are 15 percent of the $17,280.00 value of the cucumbers if they had been as warranted, or $2,592.00. The only incidental damages to which Respondent is entitled is the $121.00 cost of the federal inspection. Respondent's damages total $2,713.00.

As stated earlier Respondent's basic liability to Complainant is for the original contract price of the cucumbers, or $14,256.00. Respondent's damages deducted from this amount leaves $11,543.00 as the amount of Respondent's liability to Complainant for the cucumbers.

Complainant has also requested the payment of legal fees based on the allegation that the payment of such fees was a part of the contract, and also based on the general request in the prayer attached to its complaint that it be "awarded such amount of damages as it may be entitled to receive according to the facts established." The argument that attorney fees were included in the contract is based upon wording placed by Complainant on the face of its invoice. Complainant did not raise the issue of attorney fees until the statement in reply. Since a factual question exists as to whether the parties agreed to the payment of attorney fees there is clearly an issue of notice, and opportunity on the part of Respondent to present rebuttal evidence. However, an examination of the wording on the face of the invoice demonstrates to us that, even if agreed to by the parties, the wording does not contemplate the payment of attorney fees in a proceeding such as this. The words are as follows: "BUYER AGREES TO PAY ALL COLLECTION COSTS, INCLUDING COLLECTION AGENCY FEES, REASONABLE ATTORNEY FEES AND COURT COSTS IF THIS ACCOUNT IS PLACED IN COLLECTION." In our opinion these words contemplate the payment of costs associated with the collection of a delinquent account, and not the payment of attorney fees incurred in connection with the litigation of a good faith dispute as to whether the account is owed at all. Complainant's request for an award of attorney fees is denied.

Section 5(a) of the Act requires that we award to the person or persons injured by a violation of section 2 of the Act "the full amount of damages sustained in consequence of such violations." Such damages include interest.[17] Since the Secretary is charged with the duty of awarding damages, he also has the duty, where appropriate, to award interest at a reasonable rate as a part of each reparation

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Agric. Dec. 1032 (1952). See also *G&T Terminal Packaging Co., Inc. v. Joe Phillips, Inc.*, 798 F.2d 579 (2d Cir. 1986).

[17] *L & N Railroad Co. v. Sloss Sheffield Steel & Iron Co.*, 269 U.S. 217 (1925); *L & N Railroad Co. v. Ohio Valley Tie Co.*, 242 U.S. 288 (1916).

award.[18] We have determined that a reasonable rate is 10 percent per annum.

Complainant was required to pay a $300.00 handling fee to file its formal complaint. Pursuant to 7 U.S.C. 499e(a), the party found to have violated Section 2 of the Act is liable for any handling fees paid by the injured party.

Order

Within 30 days from the date of this Order, Respondent shall pay to Complainant, as reparation, $11,543, with interest thereon at the rate of 10% per annum from May 1, 1998, until paid, plus the amount of $300.

Copies of this order shall be served upon the parties.

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[18]See *Pearl Grange Fruit Exchange, Inc. v. Mark Bernstein Company, Inc.*, 29 Agric. Dec. 978 (1970); *John W. Scherer v. Manhattan Pickle Co.*, 29 Agric. Dec. 335 (1970); and *W. D. Crockett v. Producers Marketing Association, Inc.*, 22 Agric. Dec. 66 (1963).